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April 18, 2017

Re: *Citizens Union of the City of New York, et al. v. The Attorney General of the State of New York, et al.* (16-cv-09592-RMB)

Dear Judge Berman:

I write on behalf of our client Governor Andrew Cuomo to update the Court on the efforts undertaken by counsel to respond to your Order of March 16, 2017.

Following the parties' conference before the Court on March 16, 2017, Your Honor entered an Order consolidating the three cases for all purposes, directing that the lead case be styled *Citizens Union of the City of New York v. The Attorney General of the State of New York, et al.* (instead of *Citizens Union of the City of New York v. The Governor of the State of New York, et al.*) and concluding that "[w]ith respect to the Defendant Governor's interest in moving to dismiss the claims against him going forward (see H'r Tr., dated Mar. 16, 2017), the Court requests that the parties seek to resolve the issue consensually, i.e. without the need for motion practice."

As Your Honor knows, Governor Cuomo was only named in one of the three actions, the action instituted by Citizens Union. As such, counsel for Citizens Union, Mr. Mastro, and I have sought, via communications over the course of the past month, to resolve the issue of the Governor's status, an issue that the Governor believes is governed by repeated and controlling authority that the Eleventh Amendment provides the Governor with complete immunity from suit. See *Steinberg v. Elkman*, No. 15 CV 278-LTS-DCF, 2016 WL 796870, at *3 (S.D.N.Y. Feb. 22, 2016) (Swain, J.), aff'd, 666 Fed. App'x 26 (2d Cir. Nov. 17, 2016) ("[I]t is 'well settled that the ambit of the Eleventh Amendment's immunity includes a governor, in his official capacity[.]'"') (quoting *Nunez v. Cuomo*, No. 11-CV3457 (DLI)(LB), 2012 WL 3241260, at *20 (E.D.N.Y. Aug. 7, 2012)).

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I write to advise the Court that despite those efforts, Mr. Mastro and I have been unable to agree to a consensual resolution of the issue. Therefore, I would respectfully request that this Court grant Governor Cuomo leave to file his motion to dismiss the Amended Complaint. We would be prepared to file such a motion no later than thirty days from the entry of an order permitting him to so move. I want to assure the Court that this request will have no impact on the schedule for resolving the discovery dispute that is now fully briefed before Magistrate Judge Parker and which will be argued before her on April 25, 2017.

Respectfully submitted,

/s/ Floyd Abrams

Floyd Abrams
Cahill Gordon & Reindel LLP
Attorneys for Governor Andrew Cuomo

The Honorable Richard M. Berman
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

BY ECF

cc: All Counsel of Record (by ECF)

Pls. Citizens Union & Citizens
Union Foundation to respond
by April 25.

SO ORDERED:

Date: 4/18/17


Richard M. Berman

Richard M. Berman, U.S.D.J.